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Testimony of James Schulwolf, Member, Executive Committee  
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Judiciary Committee

**House Bill 6274**

An Act Concerning Amendments to Article 9 of the Uniform Commercial Code  
Concerning Secured Transactions  
March 9, 2011

Sen. Coleman, Rep. Fox, and honorable Members of the Judiciary Committee, thank you for the opportunity to appear and testify today on a bill of great interest to commercial law attorneys and their clients. Please be advised that the Executive Committee of the Connecticut Bar Association Commercial Law and Bankruptcy Section and the Connecticut Bar Association Committee on Commercial Finance support the revisions to Article 9 of the Uniform Commercial Code set forth in H.B. 6274.

To assist the Judiciary Committee, we submit the following information for your consideration.

**A. Overview and Background**

Revised Article 9 of the Uniform Commercial Code, being a substantially re-written version of the laws generally dealing with secured transactions in personal property, was adopted in 2001 in Connecticut as Public Law 01-132. All 50 states, Puerto Rico and the District of Columbia adopted Revised Article 9 before the July 1 2001 "uniform" effective date.

Connecticut then adopted two revisions to Revised Article 9 to address problems and issues in the implementation of Revised Article 9 in Connecticut:

1. 2003 Revision -- P.A. 03-62: In 2003 Public Act 03-62, was passed to correct a number of problems with the original text of Revised Article 9 adopted in Connecticut. This was an effort by practitioners (including panel members at this seminar), state officials and the Connecticut Bar Association to address problems found in the statute. Specific areas of the Act included: (a) allowing government transfers to be governed by Revised Article 9, if another statute permitted it to be used or no other law governed these transactions; (b) making clear that a provision in a security agreement or lease authorizing electronic self-help may be included within

the body of the security agreement or lease, as long as it is specifically stated; (c) conforming the motor vehicle certificate of title law to the provision of Revised Article 9 that permits a security interest in motor vehicles held by a debtor as inventory for sale or lease to be perfected by filing a financing statement; (d) amending the bank execution statute for judgment debtors that are not natural persons (C.G.S. §52-367a) to require the depository bank to notify any party with a security interest via a control agreement in a commercial (not consumer) deposit account of the levy and creating a procedure for a determination of conflicting interests in the account before the funds are turned over to the levying officer -- similar to the provision for exemption rights for bank execution against deposit accounts owned by natural persons; and (e) amending the statute governing postjudgment liens on personal property (C.G.S. §52-355) to overrule a decision denying a conversion claim as to property subject to a lien.

2. 2004 Revision – P.A. 04-2: In 2004, in response to concerns by the public finance bar over potential application of Revised Article 9 to public finance transactions, and after discussions with members of this panel, the General Assembly passed revisions in a budget implementation bill, P.A. 04-2, to, among other things, provide an exception to the scope of Revised Article 9 for public finance transactions, conditioned upon the existence of other statutory provisions providing the minimum requisites for creation of such liens and their enforceability against third parties. This Act also deleted the prior option of many of these state authorities to ‘opt in’ to Revised Article.

**B. National Revision to Official Text of Revised Article 9 and Connecticut Law Revision Commission Process**

In 2008 the National Conference of Commissioners on Uniform State Laws and the American Law Institute formed a joint study committee to review the operation of Revised Article 9 in practice. The study committee determined that there were a number of discrete issues to be addressed and a drafting committee was formed late in 2008 that addressed appropriate statutory changes. Also revisions were made to the Official Comments to Article 9 to provide additional guidance to judges and practitioners relating to issues where changes to the statute were not deemed advisable or warranted. The drafting committee’s revisions to the statutory text of Revised Article 9 were approved by the American Law Institute and by the National Conference of Commissioners on Uniform State Laws in 2010.

The Connecticut Law Revision Commission at a meeting on October 26, 2010 undertook a review of these revisions. The Commission review was conducted by a Commission Advisory Committee co-chaired by Commission members Neal Ossen and Thomas J. Welsh. The Advisory Committee included a group of advisors selected on the basis of their expertise in commercial law and transactions, real estate law and transactions and consumer matters, as well as a representative of the Connecticut Bankers

Association and staff members from the Office of the Secretary of the State. A number of the members of the Advisory Committee were members of the Connecticut Bar Association Commercial Law and Bankruptcy Section and the Commercial Finance Committee.

The Advisory Committee met several times in November and December of 2010 and reviewed all of the proposed revisions and additions to UCC Article 9, as well as Connecticut statutes, common law and practice associated with each of the suggested changes. The Advisory Committee prepared a proposed draft adapted for enactment in Connecticut. The draft includes necessary amendments to conform the uniform text to Connecticut law and practice, including the policy choices made in Connecticut's adoption of the major 2001 revision of Article 9, and to incorporate the concerns raised by the Office of the Secretary of the State.

A number of the more significant issues and revisions that were discussed follow:

- **Alternatives for Names of Individual Debtors – Selection of “Safe Harbor” Approach:** The single most significant decision to be made relating to alternatives set forth in the 2010 Uniform Official Text is to determine which alternative to adopt relating to the name to be specified on a financing statement for a debtor that is an individual (a natural person). Two “Alternatives” were provided in the official draft for the correct name in a financing statement for an individual debtor – Alternative A, making the name shown on the motor vehicle operator's license the *only* permitted name, and Alternative B, adopting a ‘safe harbor’ approach making the name of an individual shown on the individual's Connecticut motor vehicle operator's license or identity card *one* of the names that would be sufficient on a financing statement, in addition to the names permitted under current law as well as the first personal name and surname of the individual. The Advisory Committee strongly recommended the adoption of Alternative B, the ‘safe harbor’ approach in Connecticut for a number of reasons, including the following:
  - Alternative A is a change in current law that could render ineffective existing financing statements over relatively minor omissions or additions and changes when licenses are reissued or renewed.
  - The Office of the Secretary of the State and Department of Motor Vehicles computer systems are entirely separate systems that could use a different character sets and have different field size limitations. Therefore, “Alternative A” could create instances in which the exact required name could not be entered onto financing statements in, or searched on the records of, the Office of the Secretary of the State.
  - The Advisory Committee and the Office of the Secretary of the State felt that if “Alternative A” was selected it would be very important to harmonize the name conventions, field sizes and other technical aspects of the computer systems of the Department of Motor Vehicles and the Office of the Secretary of the State. The cost to the State to study and revise the

computer systems of the Office of the Secretary of the State and the Department of Motor Vehicles to support "Alternative A" could be substantial and they could not recommend allocating resources necessary for this task at this time.

- **Revisions coordinating with the Model Entity Transactions Act that allows redomestication of registered organizations in another state:** Certain changes in the 2010 Uniform Official Text were intended to conform UCC Article 9 to allow the revisions contemplated in the Model Entity Transactions Act that had been drafted by the National Conference of Commissioners on Uniform State Laws and which has been adopted in several states. The Business Law Section and Tax Section of the Connecticut Bar Association have been working on a proposed draft of proposed legislation that has been submitted to the General Assembly in 2011 to adopt provisions of the Model Entity Transactions Act ("META") in Connecticut. The adoption of the revisions to Article 9, while permitting the secured transactions to proceed if META is enacted will be self-consistent and will not require META to be adopted in Connecticut.
- **Clarification of rules relating to names of decedent's estates as Debtors on financing statements:** The national Official Text and proposed Bill modifies and clarifies the provisions of CGS §42a-9-503(a)(2), relating to the proper name for a financing statement when the debtor is a decedent's estate and provides more explicit rules to guide practitioners and the courts.
- **Providing for an expanded four-month rule for effectiveness of financing statements after a change in location:** The national Official Text and proposed Bill revises the provisions of CGS §42a-9-316 by adding new subsections (h) and (i) to allow a financing statement to continue to be effective to perfect a security interest in after-acquired property for up to four (4) months after the debtor changes its location to another jurisdiction or after a "new debtor" in another jurisdiction becomes bound by the debtor's security agreement. If the secured party perfects its security interest in the new jurisdiction before the expiration of the four-month period (or before the earlier lapse of the prior financing statement) the security interest would continue – otherwise the perfection will lapse as against a bona fide purchaser of the collateral. This new rule for 'new debtors' supplants the non-uniform one-year provision adopted in 2001 in CGS §42a-9-316(a)(4), which had been necessary due to the perceived absence of a rule in the earlier official draft of Revised Article 9.
- **Revision of UCC Article 9 forms and allowing adoption of revised forms by the Office of the Secretary of the State:** The national form financing statement and amendment forms are being amended in the 2010 national Official Text; however the Secretary of the State will retain the authority to adopt and to amend the national and local forms for filing by promulgation of rules, as in current Connecticut law.

C. **Recommendation:**

The Connecticut Bar Association Commercial Law and Bankruptcy Section and the Connecticut Bar Association Committee on Commercial Finance support the changes set forth in H.B. 6274. These changes will correct some issues that arose since the enactment of Revised Article 9 in 2001 and are necessary to make the Connecticut law of secured transactions, which underlies a vast area of commercial and business financing in Connecticut, conform to that of the other states that will adopt it prior to the July 1, 2013 uniform national effective date.

We respectfully recommend adoption of H.B. 6274 for the reasons noted above.

Please do not hesitate to contact us if you require any further information or if we can be of further assistance.